

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SEAGEN INC.,

Petitioner,

v.

DAIICHI SANKYO CO., LTD.,

Respondent.

Case No. 2:22-cv-01613-JLR

**PETITIONER SEAGEN INC.'S
SUPPLEMENTAL BRIEF RE RIPENESS OF
PETITION TO VACATE ARBITRATION
AWARD**

In a minute order dated February 13, 2023, the Court ordered Seagen to “file supplemental briefing regarding why its petition to vacate the Award is ripe for judicial review in light of the abovementioned legal principles and Seagen’s contention that the Award is non-final under the FAA.” (Dkt. 66, Minute Order at 3.) Seagen submits this response.

I. THE PETITION TO VACATE THE INTERIM AWARD IS NOT YET RIPE FOR JUDICIAL REVIEW

As Seagen showed in its reply, the Interim Award is not final. (*See* Dkt. 63, Reply in Support of Petition to Vacate at 9–10.) Seagen filed this petition as a protective measure because there was ambiguity when the Interim Award was issued as to its finality. (*See* Award at 20, 45; Dkt. 63, Reply at 9.) The Arbitrator has since confirmed that “no Final Award has been issued in this arbitration” and that “Seagen’s pending petition to vacate the Interim Award appears to be interlocutory.” (Dkt. 50, Ex. A at 3.) Under Ninth Circuit law, the decision is not yet ripe for judicial review. *Millmen Local 550 v. Wells Exterior Trim*, 828 F.2d 1373, 1386–77 (9th Cir. 1987); *Pac. Reinsurance Mgmt. Corp. v. Ohio Reinsurance Corp.*, 935 F.2d 1019, 1022 (9th Cir. 1991) (“judicial review of *non-final* arbitration awards ‘should be indulged, if at all, only in the most extreme cases’” (emphasis in original)); *see also Banco de Seguros v. Mut. Marine Offices, Inc.*, 230 F. Supp. 2d 362, 367–68 (S.D.N.Y. 2002), *aff’d* 344 F.3d 255 (2d Cir. 2003) (district courts lack authority to confirm or vacate arbitral awards that are not final); *Century Indem. Co. v. Certain Underwriters at Lloyd’s London*, No. 11 Civ. 1040(RJS), 2013 WL 104773, at *3 (S.D.N.Y. Jan. 10, 2012) (“the FAA only permits a federal court to confirm or vacate an arbitration order that is final”).

II. THE COURT CAN ENTER AN ORDER STAYING THE CASE PENDING DELIVERY OF A FINAL AWARD

If the Court concludes that the Interim Award is not yet final, it should enter an order staying the case until delivery of a final award. In *Epic Diving & Marine Services, LLC v. Ranger Offshore, Inc.*, C.A. No. 4:16-cv-386, 2017 WL 1397018 (S.D. Tex. Feb. 28, 2017), the court faced

1 a similar circumstance: a petition to confirm an interim arbitration award that was filed before the
 2 final award had been issued. *Id.* at *2. The court ordered that “this case be stayed, pending full
 3 and final determination by the Tribunal.” *Id.* A similar stay would be appropriate in this case.
 4 Judicial economy would be served as the Court has already devoted time to reviewing this motion.
 5 The Court would be well-positioned to resolve the petition on the merits once a final award has
 6 been delivered.

7 Dated: February 17, 2023

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